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6 Attorneys for Plaintiff
7 Board of Trustees of the Southern California
Floor Covering Pension Trust Fund

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **Western Division**

11
12 BOARD OF TRUSTEES OF THE
13 SOUTHERN CALIFORNIA FLOOR
COVERING PENSION TRUST
FUND,

14 Plaintiff,

15 vs.

16 NEW IMAGE COMMERCIAL
17 FLOORING INCORPORATED, a
suspended California corporation;
18 DOES 1 through 10, inclusive,

19 Defendants.

CASE NO.

**COMPLAINT FOR COLLECTION
OF WITHDRAWAL LIABILITY**
[29 U.S.C. §1001, et seq.; §1381, et seq.]

1 action on behalf of the Pension Fund pursuant to ERISA §§ 4301(a)(1) – (b) and
2 502(a)(3), 29 U.S.C §§1132(a)(3) and 1451(a)(1) – (b).

3 5. The Pension Fund is, and at all times mentioned has been, “an
4 employee benefit plan” as defined in ERISA § 3(3), 29 U.S.C. § 1002(3), an
5 “employee benefit pension plan” as defined in ERISA § 3(2), 29 U.S.C. § 1002(2).
6 The Pension Fund at all times mentioned was, and is now, a collectively bargained
7 multi-employer pension plan as defined in ERISA §§3(37) and 4001(a)(3), 29
8 U.S.C. §§ 1002(37) and 1301(a)(3), and established pursuant to Section 302 of the
9 Labor Management Relations Act (“LMRA”), 29 U.S.C. § 186.

10 6. Plaintiff is informed and believes, and thereon alleges, that at times
11 relevant herein, Defendant NEW IMAGE COMMERCIAL FLOORING
12 INCORPORATED (“Defendant” or “New Image”) was a California corporation
13 conducting business within this judicial district, and was suspended by the
14 California Secretary of State in or about 2017 for failure to file the required
15 Statement of Information. At all times relevant herein, New Image was and is an
16 employer in the construction industry in Southern California, and as such, is an
17 employer in an industry affecting commerce within the meaning of the LMRA and
18 ERISA.

19 7. The true names and capacities, whether individual, corporate,
20 associate, or otherwise, of defendants named herein as DOES 1 through 10, are
21 unknown at this time to Plaintiff. Plaintiff therefore sues the defendants by such
22 fictitious names, and Plaintiff will amend this complaint to show their true names
23 and capacities when the same have been ascertained. Plaintiff is informed
24 and believes and thereon alleges that each of the fictitiously names defendants is
25 responsible in some manner for the occurrences herein alleged, either through
26 its own conduct, or through the conduct of its agents, servants and/or employees,
27 or in some other manner as yet unknown, and that Plaintiff's damages as herein
28 alleged were proximately caused by those defendants.

1 14. ERISA §4202, 29 U.S.C. §1382, requires the Plan sponsor to
2 determine the amount of the withdrawn employer's withdrawal liability computed
3 in accordance with ERISA §4211, 29 U.S.C. §1391. ERISA §4219, 29 U.S.C. §
4 1399 requires the Plan sponsor to notify the employer of the amount of withdrawal
5 liability and the schedule of payments and demand payment in accordance with
6 that schedule.

7 15. The Pension Fund computed New Image's withdrawal liability in
8 accordance with ERISA §4211, 29 U.S.C. §1391, to be \$114,137.00. Plaintiff
9 computed a payment schedule of minimum annual installments of \$78,831.00,
10 payable in quarterly installments of \$19,707.75 each.

11 16. Pursuant to ERISA §4219, 29 U.S.C. § 1399, the Pension Fund
12 notified New Image of the amount of withdrawal liability on March 28, 2018, and
13 of the right to make installment payments. The calculations and the assumptions
14 used to calculate the total withdrawal liability were included to the notice.
15 Pursuant to the notice of withdrawal liability from the Plaintiff, the first payment
16 under the schedule was due on May 1, 2018.

17 17. New Image did not request a review of the determination of
18 withdrawal liability or arbitration as provided in ERISA §§4219(b)(2)(A)(i) and
19 4221, 29 U.S.C. §§1399(b)(2)(A)(i), and 1401. New Image has therefore waived
20 any defenses or objections concerning the fact and the amount of withdrawal
21 liability assessed.

22 18. New Image failed to make the initial installment payment on May 1,
23 2018.

24 19. Section 4219(c)(5) of ERISA, 29 U.S.C. § 1399(c)(5), provides that
25 in the event of a default in payments, a plan sponsor may require immediate
26 payment of the entire amount of outstanding withdrawal liability, plus accrued
27 interest on that total amount of outstanding liability from the due date of the first
28 payment which was not timely made. In a letter dated August 15, 2018, Plaintiff

1 notified New Image that if the first installment was not paid within sixty (60)
 2 days, the entirety of the liability would become due, including accrued interest and
 3 other damages.

4 20. New Image failed and refused to pay withdrawal liability as
 5 demanded and is therefore indebted to the Pension Fund in the amount of \$114,
 6 137.00, representing the total withdrawal liability owed, exclusive of interest,
 7 liquidated damages, attorneys' fees, and other incidental costs in accordance with
 8 ERISA §§502(g)(2) and 4301(b) and (e), 29 U.S.C. § 1132(g)(2) and 1451(b) and
 9 (e). Plaintiff is entitled to, and hereby seeks a money judgment against New
 10 Image for the entire unpaid balance of the withdrawal liability plus interest,
 11 liquidated damages, costs, and attorney's fees.

12 PRAYER

13 WHEREFORE, the Board of Trustees of the Southern California Floor
 14 Covering Pension Trust Fund prays for judgment against Defendants New Image
 15 Commercial Flooring Incorporated, a suspended California corporation, and
 16 DOES 1 through 10, inclusive, as follows:

- 17 1. For a judgment providing that all Defendants are liable for the
 18 following sums:
 - 19 a. \$114,137.00 representing the full amount of withdrawal liability
 20 owed;
 - 21 b. Interest pursuant to ERISA §§4219(c)(5)-(6) and 502(g)(2), 29
 22 U.S.C. §1399(c)(5) and (6) and 1132(g)(2);
 - 23 c. Liquidated damages provided for under the Pension Trust in
 24 accordance with sections 502(g)(2)(C) and 4301(b) of ERISA, 29
 25 U.S.C. §§ 1132(g)(2)(C) and 1451(b);
 - 26 d. Reasonable attorneys' fees and costs of suit incurred herein in
 27 accordance with ERISA sections 502(g)(2)(D) and 4301(e), 29
 28 U.S.C. §§ 1132(g)(2)(D) and 1451(e); and

1 2. For such other and further legal and equitable relief as this Court
2 deems just and proper.

3
4 Jeffrey L. Cutler
5 Elizabeth Rosenfeld
6 **WOHLNER KAPLON CUTLER**
7 **HALFORD & ROSENFELD**

8 DATED: November 2, 2018

9 BY: /s/ Elizabeth Rosenfeld
10 ELIZABETH ROSENFELD

11 Attorneys for BOARD OF TRUSTEES OF
12 THE SOUTHERN CALIFORNIA FLOOR
13 COVERING PENSION TRUST FUND
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